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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Mark McGlasson, a married man,

Plaintiff,

v.

Long Term Disability Coverage for All
Active Full-time and Part-time Employees,
other than those classified by the Employer
as Pilots, who are U.S. residents and whose
Total Annual Cash Compensation is
between \$60,000 and \$199,999, excluding
temporary and seasonal Employees, an
ERISA benefit plan; The Prudential
Insurance Company of America, a plan
fiduciary; and JPMorgan Chase Bank, N.A.,
a plan administrator,

Defendants.

Case No.

COMPLAINT

For his claims against Defendants Long Term Disability Coverage for All Active Full-time and Part-time Employees, other than those classified by the Employer as Pilots, who are U.S. residents and whose Total Annual Cash Compensation is between \$60,000 and \$199,999, excluding temporary and seasonal Employees (the “Plan”), The Prudential Insurance Company of America (“Prudential”), and JPMorgan Chase Bank, N.A. (“JPMorgan”) (collectively “Defendants”), Plaintiff Mark McGlasson (“Mr. McGlasson” or “Plaintiff”) alleges as follows:

JURISDICTION, VENUE AND PARTIES

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2 1. This action arises under the Employee Retirement Income Security Act of
3 1974, 29 U.S.C. §§ 1001 et seq. (“ERISA”).

4 2. The Plan is a purported ERISA benefit plan established and maintained by
5 JPMorgan for the benefit of its employees. The Plan is a welfare benefit plan that offers
6 short-term disability (“STD”) benefits and group long-term disability (“LTD”) benefits.

7 3. JPMorgan is the Plan Administrator, Plan Sponsor, and Employer.

8 4. At all relevant times, Prudential administered claims for JPMorgan under
9 the Plan, acted on behalf of the Plan, and acted as an agent for JPMorgan.

10 5. Prudential fully insures LTD benefits under the Plan with a Policy, Group
11 Contract Number G-50684-DE.

12 6. At all relevant times, Mr. McGlasson was a participant and beneficiary of
13 the Plan as an employee of JPMorgan.

14 7. Mr. McGlasson is a married person. He currently resides in Maricopa
15 County, Arizona and has been a resident of Maricopa County at all relevant times.

16 8. The Plan and JPMorgan, a large corporation, have their principal place of
17 business in the state of Delaware. Prudential has its principal place of business in the
18 state of New Jersey. Defendants Prudential and JP Morgan are licensed and authorized to
19 do business in Maricopa County, Arizona, and reside and are found within Maricopa
20 County within the meaning of the jurisdiction and venue provisions of ERISA, 29 U.S.C.
21 § 1132 and 28 U.S.C. § 1391.

22 9. This Court has jurisdiction over the subject matter of this action under
23 ERISA, 29 U.S.C. §§ 1132(a), 1132(e)(1), and 28 U.S.C. §§ 2201-02 (declaratory
24 judgments).

25 10. Venue is proper in this Court under ERISA, 29 § 1132(e)(1) and 28 U.S.C.
26 § 1391(b).

27 11. JPMorgan has a duty to administer the plan prudently and in the best
28 interest of all Plan members and beneficiaries. Prudential acted as its agent to make final

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1 decisions regarding the payment of disability benefits for the Plan and to administer the
2 Plan. Accordingly, Mr. McGlasson is informed and believes that JPMorgan and
3 Prudential are either a “named fiduciary” of the Plan, pursuant to 29 USC § 1133(2);
4 and/or a “deemed fiduciary” pursuant to 29 USC § 1002 (21)(A); and/or a “designated
5 fiduciary,” pursuant to 29 USC § 1105(c)(1)(B).

6 12. Prudential had actual or apparent authority to act as a fiduciary on behalf
7 of the Plan.

8 13. Prudential’s third-party vendors had actual or apparent authority to act as
9 fiduciaries on behalf of the Plan and administered the Plan in providing services to
10 Defendants.

11 14. On information and belief, JPMorgan conferred Prudential with
12 discretionary authority to interpret the Plan and to make eligibility determinations
13 regarding the Plan.

14 15. Prudential acted under a structural conflict of interest in both administering
15 and paying out on claims under the Plan.

16 16. Mr. McGlasson is entitled to *de novo* review of his claims, because given
17 Prudential’s structural conflict of interest and its “wholesale and flagrant violations of
18 the procedural requirements of ERISA,” *de novo* review is warranted. Prudential should
19 not be entitled to any deference in its decision-making in light of the facts and
20 circumstances of this claim.

21 GENERAL ALLEGATIONS

22 17. All previous and subsequent paragraphs are incorporated by reference.

23 *Mr. McGlasson’s Employment*

24 18. In September 2006, JPMorgan employed Mr. McGlasson, where he was
25 promoted to a Proactive Territory Manager position.

26 19. As a Proactive Territory Manager, Mr. McGlasson assisted in the
27 development and improvement of JPMorgan’s merchant companies’ banks, specifically
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1 for a region in California. Mr. McGlasson was responsible for managing sales teams,
2 including hiring and firing personnel. From a sales perspective, he helped the company
3 meet sales goals, as well as sell additional products outside of the main processing
4 products. From a leadership perspective, he helped his team meet their respective sales
5 goals, trained new team members, and completed employee performance reviews. Mr.
6 McGlasson's team worked primarily on the phone, and he worked in the office with
7 them.

8 20. Mr. McGlasson worked as a Proactive Territory Manager for JPMorgan
9 until leaving work on August 29, 2011 due to his disability. JPMorgan employed Mr.
10 McGlasson for approximately eight years until notifying him in December 2014 that his
11 employment was being terminated; Mr. McGlasson was still appealing Prudential's
12 denial of LTD benefits when JPMorgan terminated his employment.

13 ***Mr. McGlasson's Disability Benefits under the Plan***

14 21. To be eligible for LTD benefits, during the first 24 months, Mr.
15 McGlasson must be "unable to perform the material and substantial duties of [his]
16 regular occupation due to [his] sickness or injury; and [be] under the regular care of a
17 doctor; and have a 20% or more loss in [his] monthly earnings due to that sickness or
18 injury." "Material and substantial duties" are defined as those "normally required for the
19 performance of [Mr. McGlasson's] regular occupation; and cannot be reasonably
20 omitted or modified." A "Proactive Territory Manager" is considered to be his regular
21 occupation under the Plan.

22 22. To be eligible for LTD benefits after 24 months, Mr. McGlasson must be
23 "unable to perform the duties of any gainful occupation for which [he is] reasonably
24 fitted by education, training or experience; and [he is] under the regular care of a doctor"
25 due to the same sickness or injury. "Gainful occupation" is "an occupation, including
26 self employment, that is or can be expected to provide [Mr. McGlasson] with an income
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1 within 12 months or [his] return to work, that exceeds . . . 60% of [his] monthly
2 earnings, if [he is] not working.”

3 23. Under the Plan, Mr. McGlasson could be entitled to LTD benefits until
4 sixty-five (65) years of age.

5 24. Mr. McGlasson is entitled to receive 60% of his pre-disability earnings,
6 which was \$12,271.50 a month; therefore, he is entitled to \$7,362.90 each month in LTD
7 benefits before any applicable offsets.

8 25. Mr. McGlasson is required to participate in a first appeal. Thereafter, he
9 may participate in a second, voluntary appeal.

10 ***Mr. McGlasson's Receipt of STD and LTD Benefits***

11 26. Mr. McGlasson suffers from multiple medical conditions that render him
12 disabled under the Plan. Mr. McGlasson applied and was approved for STD benefits in
13 December 2, 2009 following back surgery. He returned to work until undergoing a neck
14 surgery on April 13, 2011; this surgery would prove to be the first of several surgeries
15 that Mr. McGlasson would need. He applied and was approved for STD benefits
16 surrounding his April 13, 2011 surgery. Mr. McGlasson returned to work for a short
17 period of time after his April 13, 2011 surgery; however, he struggled significantly. As a
18 result, he stopped working completely on August 29, 2011 due to his conditions.

19 27. After receipt of STD benefits, Mr. McGlasson applied and was approved
20 for LTD benefits effective February 27, 2012. Prudential approved his LTD claim based
21 on a review of the medical records but began recommending “flight path 4,” or
22 “Segment 4,” in terms of Prudential’s management of the claim.

23 28. Despite various treatments, Mr. McGlasson’s debilitating symptoms
24 continued, and his treating providers, including his orthopedic surgeon, reported that Mr.
25 McGlasson could not work. As of March 2012, Mr. McGlasson’s objective medical
26 findings supported his reported symptoms and the need for further surgery. The April 13,
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1 2011 neck surgery had failed; among the issues, hardware was coming loose in Mr.
2 McGlasson's neck, the bone had not fused, and his spine was being forced outwards.

3 29. Mr. McGlasson underwent another neck surgery on March 13, 2012. This
4 neck surgery would also prove ultimately unsuccessful. Moreover, his symptoms did not
5 improve following the March 13, 2012 surgery.

6 30. On June 30, 2012 Mr. McGlasson participated in a Social Security
7 Administration ("SSA") consultative examination ("CE") with Dr. Melissa Linner for
8 consideration of a Social Security Disability Insurance ("SSDI") application.

9 31. Prudential requested that Research Consultants Group, Inc. ("RCG")
10 conduct an "Activity Investigation" dated August 27, 2012, as well as surveillance on
11 September 19, 20, and 21, 2012 pursuant to "flight path 4." The surveillance and
12 activity checks involved asking Mr. McGlasson's unidentified neighbors personal
13 questions about him and his family, which RCG referred to as "neighborhood
14 canvassing." Although neither the particular questions nor neighbors were ever revealed,
15 RCG seemingly asked neighbors about Mr. McGlasson's marital and familial history,
16 medical history, activities, and restrictions and limitations.

17 32. During the September 19-21, 2012 surveillance, Prudential recorded a total
18 of 3 minutes and 12 seconds of video. On September 19, 2012, Prudential did not
19 observe Mr. McGlasson leave the house but did confirm through "discreet inquiry" that
20 he was home. On September 20, 2012, Prudential contacted Mr. McGlasson's medical
21 provider to confirm a doctor's appointment and followed him as he traveled to the
22 appointment. He used a cane some of the time and, when he did not, was observed
23 limping. On September 21, 2012, Prudential again utilized a "discreet inquiry" to
24 confirm Mr. McGlasson was home but obtained no footage.

25 33. Throughout 2012, Mr. McGlasson tried conservative treatments, including
26 a bone stimulator, to delay the need for additional surgery. He experienced severe pain.
27 Due to another failed surgery and his pain, on March 26, 2013, Mr. McGlasson
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1 underwent his third neck surgery in just under two years. He continued to provide
2 Prudential with information it requested and believed his LTD benefits would continue
3 to be paid based on his eligibility under the Plan.

4 34. Following his third surgery, Mr. McGlasson continued experiencing neck
5 pain and other symptoms. Diagnostic imaging and evaluation in May 2013 substantiated
6 additional spine and neck degeneration, including loosening of hardware. Mr.
7 McGlasson was facing the possibility of a fourth surgery.

8 35. Meanwhile, Prudential continued to note the claim as “Segment 4” and
9 again employed RCG to conduct another “Activity Investigation” summarized in a
10 report dated July 11, 2013, which included subsequent surveillance of Mr. McGlasson
11 on August 5, 6, and 7, 2013. The surveillance was even less eventful this attempt;
12 Prudential only recorded approximately 20 seconds of Mr. McGlasson in his backyard
13 on one day, August 5, from the nose up. Again, RCG engaged in “neighborhood
14 canvassing” for Prudential. Based on RCG’s solicited comments from unidentified
15 neighbors as part of its second “neighborhood canvass,” Mr. McGlasson purportedly
16 attended LA Fitness 2-3 times each week, walked his dog around the neighborhood with
17 his wife, and hiked a few times each month. He also went out to eat at local restaurants.
18 None of the neighbors’ identities were identified, and Prudential did not further verify
19 that the neighbors had any personal knowledge of Mr. McGlasson and his family’s
20 activities.

21 36. Prudential also requested a file review from Dr. Claude Oster, specialist in
22 Physical Medicine and Rehabilitation, with Nationwide I.M.E., who conducted a
23 “Medical Record File Review” of Mr. McGlasson’s file that is summarized in a report
24 dated August 25, 2013. The file review is littered with blatant misstatements and
25 inaccuracies. Despite Mr. McGlasson’s multiple surgeries, conditions, and resulting
26 symptoms, Dr. Oster concluded that there should be *no* restrictions and limitations on
27 Mr. McGlasson’s functionality. Dr. Oster did not reach out to Mr. McGlasson’s treating
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1 physicians for information or clarification on his conditions and treatment. He did not
2 explain why he disagreed with Mr. McGlasson's treating physicians, and he did not
3 personally examine Mr. McGlasson.

4 ***Mr. McGlasson's Receipt of SSDI Benefits***

5 37. Mr. McGlasson attended an in-person SSA hearing with Administrative
6 Law Judge Sheldon Zisook, who awarded Mr. McGlasson SSDI benefits in a Fully
7 Favorable Decision dated September 6, 2013. Significantly, in his decision, Judge
8 Zisook expressly rejected Dr. Linner's CE findings. First, Judge Zisook found that Dr.
9 Linner's CE "did not adequately consider [Mr. McGlasson's] subjective complaints or
10 the combined effect of [his] impairments." Ironically, Prudential focused much of its
11 Denial on the CE with Dr. Linner, specifically because of her observations regarding Mr.
12 McGlasson's credibility. Second, Judge Zisook found that "[c]onsultative examiner Dr.
13 Melissa Linner reported that [Mr. McGlasson] can perform a reduced range of light work
14 . . . [I am] unable to assign any significant weight to this opinion in light of the overall
15 medical evidence, which indicates that [Mr. McGlasson] would have greater
16 restrictions." Judge Zisook assigned "great weight" to treating provider who stated that
17 Mr. McGlasson could not work, because the treating provider's assessment was
18 "supported by the objective medical evidence."

19 ***Prudential's First Denial of Benefits and "Recovery" Efforts***

20 38. Prudential denied Mr. McGlasson's LTD benefits in a letter dated
21 September 19, 2013 (the "First Denial"). According to Prudential, a review of the file
22 did not support *any* medically necessary restrictions and or limitations from any one
23 condition or combination of conditions from May 2013 forward. Prudential based the
24 First Denial on Dr. Oster's file review, Dr. Linner's CE, and RCG's "neighborhood
25 canvassing" efforts, including the allegation that Mr. McGlasson went to LA Fitness
26 several times per week.
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1 39. Prudential knew about Mr. McGlasson's SSDI award prior to issuing the
2 First Denial. Allsup, Prudential's preferred third party vendor, represented Mr.
3 McGlasson throughout the SSDI application and at the SSA hearing with Judge Zisook.
4 Prudential and Allsup were in frequent communication about the SSA application
5 process, and Allsup sought overpayment on behalf of Prudential.

6 40. Instead of considering the SSDI award in determining eligibility,
7 Prudential terminated Mr. McGlasson's LTD benefits and then immediately demanded
8 overpayment in the amount of \$28,006.60. It used Mr. McGlasson's SSA representative,
9 Allsup, to spearhead the collection efforts against Mr. McGlasson.

10 41. In a letter dated September 30, 2013, Mr. McGlasson's legal counsel
11 notified Prudential that all communications should be directed to the law firm. It also
12 requested all relevant documents under ERISA and detailed the requested information in
13 the letter. Delivery to Prudential was confirmed via Certified Mail receipt.

14 42. In disclosures with a cover letter dated October 2, 2013, Prudential
15 disclosed the claim file. Prudential did not address Plaintiff's enumerated requests and
16 provided a blanket denial for requested further documentation, citing that it was
17 producing all relevant documents required under ERISA.

18 43. In a letter dated October 31, 2013, Mr. McGlasson's legal counsel wrote to
19 Prudential regarding its overpayment demands immediately following the First Denial:
20 "After careful review of the Prudential Reimbursement Agreement form, the Plan, and
21 applicable law, we have advised Mr. McGlasson about the potential consequences of
22 keeping his SSDI award. Out of necessity, Mr. McGlasson has decided to use the SSDI
23 award to pay for living expenses in order to avoid bankruptcy. Because of Prudential's
24 termination, he feels that he has no choice but to use the retroactive SSDI award in this
25 manner. Prudential's LTD benefits termination has placed Mr. McGlasson and his
26 family on the verge of financial ruin . . ." Plaintiff's legal counsel confirmed Prudential's
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1 receipt of this letter. Mr. McGlasson also terminated his relationship with Allsup, who
2 was acting as Prudential's collections agent.

3 44. Even after the October 31, 2013 letter from counsel, Prudential and Allsup
4 continued communicating with Mr. McGlasson directly and threatening collections if he
5 did not provide the overpayment amount. Their efforts are documented in a letter sent
6 directly to Mr. McGlasson dated November 25, 2013 (three days before Thanksgiving),
7 threatening further action if he did not personally hand over the SSDI benefits to
8 Prudential: "Please be advised that Prudential stands firm on its position that the
9 overpayment is owed by you and stands willing to take appropriate action in order to
10 protect its interest if you do not resolve this matter by voluntary reimbursement. If we do
11 not receive reimbursement by December 16, 2013, further action will be taken."
12 Prudential made these threats, despite its fiduciary role in the LTD appeals process and
13 despite the fact that the Plan provided for alternative means for collecting
14 "overpayment."

15 45. Plaintiff's legal counsel spoke with Prudential directly and again sent a
16 letter dated November 26, 2013, detailing the legal issues with Prudential and Allsup's
17 overpayment efforts. The letter discussed Ninth Circuit precedent that prohibited the
18 recovery of SSDI benefits that were not Plan benefits, as well as explained that sending
19 Plaintiff to collections was not equitable relief permitted under ERISA. The letter also
20 highlighted serious concerns over Prudential's dual role as fiduciary and collections
21 agent: "Prudential is both funding and administering Mr. McGlasson's LTD benefits
22 claim while also actively seeking overpayment from him. Prudential's financial interests
23 appear to be governing its actions on this claim. Please provide evidence of how you are
24 safeguarding Mr. McGlasson's LTD claim from Prudential's obvious conflict of interest.
25 We previously requested this information from Prudential in our September 30, 2013
26 claim file request letter. Prudential did not disclose anything pertaining to this issue, so
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1 we must assume that Prudential has not taken any safeguards whatsoever. Please let me
2 know if I am incorrect.”

3 46. In a letter dated January 29, 2014, Prudential agreed to cease collection
4 efforts pending resolution of the LTD appeal. Meanwhile, Mr. McGlasson and his family
5 slid further into financial ruin and became bankrupt, which would not have happened if
6 Prudential had not terminated Mr. McGlasson’s LTD benefits.

7 47. On February 7, 2014, Mr. McGlasson requested several relevant
8 documents that were not included in Prudential’s October 2, 2013 disclosures, including
9 but not limited to the surveillance videos; identification of the “neighbors” that RCG
10 spoke with and any documentation of those conversations; and service contracts between
11 Prudential and its vendors Allsup, RCG, Nationwide I.M.E., given that these vendors
12 were entrusted with fiduciary roles in the handling of Mr. McGlasson’s claim.

13 48. On February 28, 2014, Plaintiff’s legal counsel invited Prudential to attend
14 a personal interview of Mr. McGlasson and expressed concern that, to date, Prudential
15 had not disclosed the surveillance videos. Prudential declined to attend and eventually
16 provided over 200 pages of additional, relevant disclosures along with a letter dated
17 March 5, 2014 and finally, the surveillance tapes. It still withheld requested documents
18 on the basis that any further disclosure was “premature.” Appeals Specialist Kimberly
19 Cyr explained that the complete appeal *must* be received no later than April 7, 2014.

20 ***Mr. McGlasson’s First Appeal and the IME Request***

21 49. Mr. McGlasson timely appealed the First Denial in a letter dated April 7,
22 2014 (the “First Appeal”). In the 18-page First Appeal, Mr. McGlasson provided
23 additional medical evidence and a detailed discussion of his medical conditions and why
24 they are disabling. He provided new imaging that substantiated the need for further neck
25 surgery. Among the evidence provided, he also provided proof that he had not been a
26 member of LA Fitness since 2008, and that the alleged neighbors’ statements were
27 inaccurate.
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1 50. In a letter dated April 24, 2014, Prudential requested Mr. McGlasson
2 provide medical records that were previously disclosed with the First Appeal and also
3 requested an independent medical examination (“IME”) of Mr. McGlasson to determine
4 restrictions and limitations (“R&Ls”) from September 19, 2013. Both in a discussion and
5 in a letter dated April 30, 2014, Plaintiff’s legal counsel explained for various reasons
6 why an IME was unreasonable at this stage in the process, questioned how a current IME
7 would be able to assess past R&Ls, and argued that Prudential should reinstate LTD
8 benefits and thereafter conduct an IME. Notwithstanding, legal counsel agreed to
9 comply if Prudential would agree to certain conditions. Legal counsel also inquired
10 about Flight Path 4.

11 51. In response to Plaintiff’s IME request that Prudential and Plaintiff choose a
12 mutually agreeable IME doctor with a non-litigation background, Prudential responded
13 as follows in a letter dated May 9, 2014:

14 The doctor is chosen by medical vendors in order to eliminate any
15 influence by Prudential and keep the examination truly “independent.” We
16 are confident that our vendors have fully reviewed and evaluated the
17 physicians to whom the IME referrals are submitted, and that the IME
18 physicians are board certified in their specialty field. As such, Prudential
19 has no influence as to the selection of the IME physician other than the
20 requested clinical specialty. We assert that the physician to whom the IME
21 is assigned will be selected by the external vendor only, without influence
22 from your office or from Prudential.

23 Prudential agreed to allow Mr. McGlasson to videotape the IME. Prudential lastly
24 explained, “[a]s stated above, we will move forward with the scheduling of the IME and
25 if you so chose, you may refuse to allow Mr. McGlasson to participate.” Prudential did
26 not ask for a response from Plaintiff’s legal counsel and indicated the IME would be
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1 scheduled and Plaintiff notified with the option to attend. Mr. McGlasson waited to be
2 notified.

3 52. One day before its 45-day deadline to make a determination on appeal,
4 Prudential sent a letter dated May 21, 2014, explaining it would suspend all ERISA
5 timeframes pending the IME, and that it was unable to make a determination on the
6 claim until legal counsel responded to the May 9, 2014 letter. However, the May 9, 2014
7 letter did not ask for a response and indicated Prudential would contact Plaintiff with
8 IME details.

9 53. In a letter dated May 27, 2014, Mr. McGlasson's legal counsel explained
10 that Prudential failed to comply with its 45-day deadline, that requesting an IME on
11 appeal does not indefinitely toll Prudential's review requirements under ERISA, and that
12 Prudential's refusal to allow Mr. McGlasson to respond to the IME on appeal would be a
13 violation of *Salomaa v. Honda Long Term Disability Plan*, 642 F.3d 666, 680 (9th Cir.
14 2011). Legal counsel also explained the obvious issues regarding the IME doctor's
15 "independent" nature:

16 I do not share your confidence in the vendor's IME reviewer selection or the
17 competence of that reviewer, especially in light of the file review you secured
18 [previously]. Moreover, I dispute that the vendor is "truly independent," because
19 we have not been afforded an opportunity to provide input regarding vendor
20 selection, or to ensure that the vendor implements appropriate quality procedures
21 in retaining physicians. Indeed, you have not yet revealed the vendor's identity to
22 Mr. McGlasson, and you have refused him the opportunity to ask questions of the
23 IME reviewer or to respond to the IME report. Prudential's previously employed
24 vendors, such as MLS or RRS, are widely recognized as defense-oriented and
25 biased against claimants. Besides the fact that you have singlehandedly selected
26 the vendor, you are also paying for the vendor. Given the circumstances,
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1 Prudential cannot in good faith argue that it has no influence over the IME
2 process.

3 Notwithstanding, Plaintiff *still agreed to an IME* if certain questions were answered and
4 conditions were met that would ensure an independent IME process. Mr. McGlasson
5 even offered to pay for half of the IME.

6 54. Prudential pressed forward with scheduling an IME with ExamWorks.
7 However, in a letter dated June 5, 2014, Appeals Specialist Susan Schultz alleged that
8 Plaintiff's counsel was in direct communication with the IME physician's office and, in
9 the interest of keeping the IME "independent," a different IME doctor would be
10 requested. The allegation was untrue and insinuated that legal counsel attempted to
11 unduly influence the IME process. Plaintiff's legal counsel submitted an explanatory
12 letter and supporting declaration explaining that the allegation was untrue and expressing
13 her concern over the allegation. Legal counsel set a deadline for completing the IME:
14 "[U]nless Prudential can agree to the scheduling *and completion* of an IME on or by
15 Friday, June 20, 2014 and the completion of its review on or by Friday, July 18, 2014,
16 we are hereby declining participation in the IME, so as to avoid further delay on Mr.
17 McGlasson's claim."

18 55. Prudential responded to the June 5, 2014 letter on June 24, 2014 and
19 maintained her accusation that Plaintiff's legal counsel tried to contact the IME
20 physician as reported by his office. She indicated that Prudential was in the process of
21 scheduling another IME.

22 56. On July 1, 2014 and July 5, 2014, Plaintiff's legal counsel was contacted
23 by James Papi who held himself out to be a "Senior Appeals Specialist" filling in for
24 Susan Schultz. He expressed Prudential's inability to find an IME doctor in Mr.
25 McGlasson's geographic area, so Prudential wanted to secure another file review instead
26 of an IME; therefore, it wanted Plaintiff's legal counsel to approve a review period
27 beyond 90 days. Plaintiff's legal counsel "approved" Prudential's additional time until
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1 July 18, 2014 but would not approve the time requested by Prudential. It was soon
2 discovered and documented that Mr. Papi was an active attorney working for
3 Professional Disability Associates (“PDA”), a third party claims provider, and not
4 Prudential. In written correspondence with Plaintiff’s legal counsel, Mr. Papi dated a
5 letter earlier than the actual drafting date to make it appear that he had intended to
6 disclose his PDA affiliation; however, the letter was sent and faxed after Mr.
7 McGlasson’s legal counsel discovered and revealed Mr. Papi’s dishonest conduct.

8 ***Prudential’s Second Denial and Overpayment Efforts***

9 57. Prudential upheld its First Denial in a letter dated August 18, 2014 (the
10 “Second Denial”). Prudential did not meaningfully consider the supplemental medical
11 evidence and avoided any analysis of the claim by simply reciting portions of Plaintiff’s
12 medical history. Prudential’s conclusion to uphold the First Denial was unreasoned and
13 not at all logically related to its rendition of the medical history. It acknowledged Mr.
14 McGlasson had a second, voluntary appeal but immediately initiated collection efforts
15 again in a letter dated August 20, 2014.

16 58. In its Second Denial, Prudential misrepresented the reason it did not pursue
17 the IME as being due to Plaintiff’s objections, when in reality, Prudential elected not to
18 move forward under the a reasonable timeframe, because it purportedly could not find an
19 IME doctor in Mr. McGlasson’s “geographic” area.

20 59. Through MLS, Prudential secured a file review by Dr. Siva Ayyar to
21 support its Second Denial, who conducted a “peer review” of Mr. McGlasson’s file
22 summarized in a report dated July 29, 2014 without evaluating Mr. McGlasson in
23 person. Dr. Ayyar established, without persuasive explanation, limitations that were
24 unsupported and contradictory to those set forth by Mr. McGlasson’s treating physicians.
25 He also reviewed and relied on the surveillance reports by RCG, which were biased and
26 riddled with false statements from the “neighborhood canvassing.”
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1 60. On August 25, 2014, Plaintiff's legal counsel responded to Prudential's
2 renewed overpayment efforts: "Nothing has changed since my November 26, 2013
3 letter, except that the McGlassons have, in fact, been forced into bankruptcy as a result
4 of Prudential's termination. The recent delay in rendering a decision within 90 days per
5 ERISA regulation has only further exacerbated the McGlassons' financial issues. I do
6 not represent the McGlassons on their bankruptcy matter, but I can inquire as to their
7 attorney's contact information if you would like." Prudential requested the bankruptcy
8 information, so Plaintiff's legal counsel sent the entire Voluntary Petition to Prudential
9 in a letter dated October 10, 2014.

10 ***Mr. McGlasson's Second, Voluntary Appeal***

11 61. On February 13, 2015, Mr. McGlasson filed his second, voluntary appeal
12 permitted under the Plan (the "Second Appeal"). Since the First Appeal, Mr. McGlasson
13 had continued to struggle medically and underwent a fourth surgery on September 23,
14 2014. In light of the worsening of his conditions and the additional surgery, Mr.
15 McGlasson decided to participate in the voluntary appeal to explain the need for
16 additional surgery. The Second Appeal included additional documentation in support of
17 Mr. McGlasson's disability, including updated imaging, records from the fourth neck
18 surgery on September 23, 2014, evidence about Dr. Ayyar's credibility, and clarification
19 from Mr. McGlasson's orthopedic surgeon that Mr. McGlasson will likely need
20 additional surgical intervention and "is incapable of performing any type of full-time
21 work secondary to his cervical and lumbar degenerative disc disease." Mr. McGlasson's
22 orthopedic surgeon addressed Dr. Ayyar's report and widely disagreed with Dr. Ayyar's
23 opinions.

24 62. On March 2, 2015, Prudential sent another letter, just like in its review of
25 the First Appeal, alleging that various medical records were missing. In fact, all of the
26 medical records were in its possession and provided with the Second Appeal.
27 Notwithstanding, it asked for the medical records to be facilitated *after* its 45-day review
28

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1 deadline. In a detailed letter dated March 4, 2015, Mr. McGlasson promptly explained
2 where each and every medical record was in the administrative record submitted with the
3 Second Appeal and asked that Prudential please call legal counsel in the future to locate
4 documents, so that the review period would not be unnecessarily delayed.

5 63. After Plaintiff notified Prudential that the first 45 days had lapsed for
6 rendering a determination, and Prudential missed this deadline, it sent a letter
7 conveniently noted with an earlier date to give the appearance that Prudential had
8 complied with ERISA-mandated timeframes; however, it was apparent from the fax and
9 mailing envelope (both are part of the administrative record) that the letter was not sent
10 in compliance with Prudential's 45-day review. This was not the first time that
11 Prudential had dated a letter earlier than the true drafting of that letter in order to paint
12 the company in a more favorable light. These "white lies" are not harmless and
13 demonstrate Prudential's mismanagement of the claim and dishonesty in its claims
14 handling.

15 ***Prudential's Final Denial and Demand for "Overpayment"***

16 64. Prudential issued its final denial in a letter dated April 27, 2015 (the "Final
17 Denial"). Of its many issues, the Final Denial is highly adversarial, relies on new reasons
18 for denial previously undisclosed, and provides no meaningful explanation as to why Mr.
19 McGlasson does not qualify for LTD benefits under the terms of the Plan. Prudential
20 contradicted its reasons for previous denials by acknowledging that Mr. McGlasson
21 would require recovery time after surgeries and provided new R&Ls based on a new file
22 reviews that Mr. McGlasson never had the opportunity to see. Although the claim had
23 been ongoing since literally September 2013 when Mr. McGlasson was awarded SSDI
24 benefits, Prudential discredited the SSA decision because it was now outdated in 2015.

25 65. Despite physical therapy, injections, various medications, and four cervical
26 spine surgeries occurring on April 13, 2011, March 13, 2012, March 26, 2013, and
27 September 23, 2014, Mr. McGlasson continued to experience ongoing neck, arm, and
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low back pain. He also has other medical conditions and symptoms that contribute to his disability under the Plan.

66. Mr. McGlasson's medical conditions never improved and, in fact, have worsened since May 2013.

67. Mr. McGlasson is totally disabled from his regular occupation and any gainful occupation for which he is reasonably fitted by training, education, and experience.

68. Mr. McGlasson continues to be disabled as defined by the Plan for LTD benefits eligibility.

69. Mr. McGlasson should be entitled to LTD benefits until he is 65 years old.

70. Mr. McGlasson's claims are subject to *de novo* review.

71. Mr. McGlasson exhausted his administrative remedies under the Plan.

72. Mr. McGlasson satisfied all of the jurisdictional prerequisites to filing a claim, and his claim is timely before this Court.

73. On information and belief, Mr. McGlasson may be entitled to additional benefits from JPMorgan as a disabled employee including, but not limited to, health insurance, life insurance, supplemental LTD benefits, and retirement/pension credits.

74. Mr. McGlasson is entitled to seek any and all relief allowed pursuant to ERISA, including equitable remedies, in an effort to enforce his rights under the Plan.

COUNT I
(Recovery of Plan Benefits)
(Defendants Prudential and the Plan)

75. All previous and subsequent paragraphs are incorporated by reference.

76. The Plan is an Employee Welfare Benefit Plan as defined in ERISA, 29 U.S.C. § 1002. Defendants are the Plan, Plan administrators, or Plan fiduciaries of the Plan under ERISA.

77. The Plan represents LTD coverage and a promise to provide LTD benefits until Mr. McGlasson is no longer disabled under the terms of the Plan.

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1 78. Mr. McGlasson became disabled in 2011 and continues to be disabled. He
2 is unable to perform the material and substantial duties of any gainful occupation under
3 the terms of the Plan. He has claimed the benefits under the Plan to which he is entitled.

4 79. Mr. McGlasson reasonably expected that his conditions met the
5 requirements of Disability as defined by the Plan for LTD benefits, and that he would
6 receive benefits under the Plan until age 65 or until he was no longer disabled.

7 80. Despite the coverage of Mr. McGlasson's disability, Prudential has
8 improperly terminated LTD benefits to Mr. McGlasson in breach of the Plan and
9 ERISA. Prudential's collective conduct was arbitrary, capricious, an abuse of discretion,
10 not supported by substantial evidence, and was clearly erroneous. Prudential committed
11 almost every wrongful action conceivable to justify the Court reducing the level of
12 discretion afforded to Prudential. In light of Prudential's structural conflict of interest
13 and wholesale and flagrant procedural violations of ERISA, Mr. McGlasson should be
14 entitled to *de novo* review.

15 81. Prudential's structural conflict of interest manifests in the form of "flight
16 paths;" instead of evaluating a participant's eligibility based on the applicable plan
17 language and medical evidence, Plaintiff is informed and believes that Prudential makes
18 claims decisions based on the claims resources and financial risk it faces on certain
19 claims. Mr. McGlasson was identified early on in Prudential's claims process as "flight
20 path 4" by several Prudential employees, notably Erin Benjamin, Katherine Harrison,
21 Aneesah Fain, and Donna Racioppi. **One month before the First Denial, Mr.**
22 **McGlasson's claim file reflects that the "[b]asis for flight path recommendation: no**
23 **[return to work] plans, multi[ple] conditions."** As a result of his "flight path 4"
24 designation, Mr. McGlasson was referred to "senior claims review." Despite several
25 requests for what this means, and despite its clear relevance to Prudential's handling of
26 Mr. McGlasson's claim, Prudential has not disclosed relevant documents related to its
27 "flight paths."
28

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1 82. Prudential has been determined to deny Mr. McGlasson's claim. It failed
2 to provide Mr. McGlasson with a description of any additional material or information
3 "necessary" to "perfect the claim" and to do so "in a manner calculated to be understood
4 by the claimant." Prudential "hid the ball" from Mr. McGlasson by failing to advise him
5 of what was needed to approve the LTD claim, instead changing its reasons for denial.
6 Initially, it found Mr. McGlasson had no restrictions and limitations; by the Final Denial,
7 it conceded he had medically supported R&Ls but found those R&Ls did not "medically
8 contraindicate" work, which is not even a Plan term. It relied on evidence that Mr.
9 McGlasson could never address, such as the "neighborhood canvassing" by RCG. It
10 continually added new reasons for denial, in the Final Denial even going as far as to
11 assert new, undisclosed reasons for questioning Mr. McGlasson's credibility. Even
12 when Mr. McGlasson provided evidence that he had undergone additional cervical spine
13 surgery, Prudential had to acknowledge "multiple surgeries with complications," but this
14 was still not enough. Prudential's adversarial actions precluded Mr. McGlasson from
15 responding to Prudential's rationale for denial at the administrative level.

16 83. Prudential wrongfully denied Mr. McGlasson's disability benefits without
17 providing a coherent explanation for its denials, and in a way that conflicts with the plain
18 language of the Plan, violating 29 U.S.C. §§ 1109, 1132.

19 84. Prudential did not properly consider all of the available evidence when
20 denying Plaintiff's benefits. In doing so, Prudential failed to conduct a full and fair
21 review. By way of example, it did not have several medical records and diagnostic
22 testing results as part of its original claim file disclosure that it should have requested
23 before terminating the LTD claim.

24 85. Prudential blatantly misstated medical evidence for its own financial
25 benefit. It overstated and excessively relied on the surveillance reports, but withheld the
26 surveillance tapes, presumably because they did not support the biased reports and
27 actually corroborated Mr. McGlasson's reported R&Ls. Prudential relied on findings that
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1 constitute “clearly erroneous findings of fact” in making its benefit determinations. By
2 way of example, Dr. Oster’s file review is littered with erroneous statements regarding
3 imaging results, at which time Dr. Oster reported the exact opposite findings of several
4 radiological reports and medical records. Prudential then relied on Dr. Oster’s erroneous
5 factual findings to deny benefits. The “neighborhood canvassing” was clearly erroneous.
6 Indeed, Prudential abused its discretion by basing its decision on unreliable and
7 inaccurate information in many respects. When confronted with this knowledge,
8 Prudential failed to rectify its inaccuracies.

9
10 86. Prudential tainted its medical file reviewers in the review process by giving
11 the reviewers inaccurate information regarding Mr. McGlasson, while also failing to
12 provide its reviewers with all of the relevant evidence. Prudential provided its reviewers
13 with RCG’s biased surveillance reports and “neighborhood canvassing” but not with the
14 actual surveillance tapes. Prudential provided Dr. Oster with internal “SOAP” notes,
15 which skewed Dr. Oster’s ability to make an “independent” medical determination and
16 created further bias in his medical review. Likewise, Dr. Ayyar relied upon the
17 surveillance reports, which were biased and riddled with false statements, and not the
18 actual surveillance videos. Prudential never conducted the so-called “de novo clinical
19 review” alleged in its Final Denial.

20 87. Prudential provided Dr. Ayyar with Dr. Oster’s report and other inaccurate,
21 malicious information involved in the First Denial, which was a procedural violation of
22 ERISA. It did nothing to insulate the appeals reviews from its initial determination and
23 used the same claims managers throughout Mr. McGlasson’s administrative appeals
24 process, or at least used employees who were managed by the same person(s) and who
25 were orchestrating the denial according to “flight path 4.” *See* 29 C.F.R. 2560.503-
26 1(h)(3)(ii), (h)(4) (requires claim fiduciaries to “[p]rovide for a review that does not
27 afford deference to the initial adverse benefit determination and that is conducted by an
28 appropriate named fiduciary of the plan who is neither the individual who made the

1 adverse benefit determination that is the subject of the appeal, nor the subordinate of
2 such individual.”).

3 88. Prudential failed to consult with health care professionals who had
4 appropriate training and experience in the field of medicine involved in the medical
5 judgment that was being rendered; namely: Orthopedic Surgery. *See* 29 C.F.R. §
6 2560.503-1(h)(3), 3(iii). None of Prudential’s file reviewers had board certifications in
7 Orthopedic Surgery. By Prudential’s admission, it secured multiple reviews from
8 reviewers specializing in Occupational Medicine and Physical Medicine and
9 Rehabilitation but never the one specialty required to properly consider Plaintiff’s claim:
10 Orthopedic Surgery.

11 89. Prudential routinely emphasized reports that favored a denial of benefits
12 while deemphasizing other reports that suggested a contrary conclusion, especially with
13 regards to its reliance on CEs from the SSA file that Judge Zisook expressly rejected.

14 90. Prudential failed to investigate Mr. McGlasson’s claim adequately,
15 including its failure to conduct an in-person medical evaluation, which would have been
16 beneficial to a full and fair review of Mr. McGlasson’s claim. Prudential had ample
17 opportunity to conduct an IME prior to denial, but it depended instead on unreliable
18 evidence to terminate Mr. McGlasson’s LTD benefits, such as double hearsay from
19 neighbors that it refused to identify. It then unreasonably requested an IME on appeal in
20 violation of ERISA.

21 91. Prudential has unreasonably withheld relevant documents throughout the
22 entire claim and consistently poorly managed the claim file, which is in part evidenced
23 by its repeated failure to locate documents Plaintiff disclosed on appeal, as well as its
24 recent, 6,000+ page disclosure of Mr. McGlasson’s claim file almost entirely comprised
25 of duplicate documents. In its recent, 6,000+ page disclosure, it omitted at least the file
26 review report of the referenced Occupational Medicine physician cited in the Final
27 Denial. Prudential’s failure to comply with ERISA’s disclosure requirements and poor
28

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1 management of the file demonstrates its abuse of discretion and improper claims
2 handling.

3 92. Prudential failed to properly consider the opinions of Mr. McGlasson's
4 treating and examining physicians. It also failed to reasonably consider Mr. McGlasson's
5 reported symptoms and limitations, and side effects of his medications, in determining
6 whether he was disabled under the Plan. Prudential knew about Mr. McGlasson's
7 worsening issues and additional surgery following his First Appeal but chose to ignore
8 those findings. Indeed, Prudential acted arbitrarily and capriciously when it selectively
9 reviewed Mr. McGlasson's medical records, relying only on those portions of his
10 medical records that supported a denial of benefits.

11 93. Prudential unreasonably failed to properly consider Mr. McGlasson's
12 September 6, 2013 fully favorable SSA decision by Judge Zisook and the SSA file. It
13 encouraged Mr. McGlasson to file for SSDI benefits through its preferred vendor and,
14 when the SSA awarded benefits, Prudential failed to address and distinguish its contrary
15 disability decision. The attempt it did make at considering the SSA decision was
16 disingenuous and lacking in any meaningful rationale. Prudential demanded
17 overpayment of SSDI benefits while simultaneously denying Mr. McGlasson's LTD
18 benefits with the knowledge that he was financially drowning and had a family to
19 support, including dependent children. Prudential's failure to properly consider the SSA
20 decision is inexcusable, especially because it had access to Mr. McGlasson's SSA file
21 through the assistance of Allsup, who represented Mr. McGlasson in obtaining his SSDI
22 benefits. Likewise, Prudential provided Allsup with unfettered access to its DCM claims
23 system.

24 94. In terminating Mr. McGlasson's LTD benefits, Prudential completely
25 disregarded evidence of Mr. McGlasson's worsening condition. It is uncontroverted –
26 both in Prudential's internal notes and the medical records - that Mr. McGlasson's
27 conditions had not changed or improved.
28

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1 95. Prudential improperly demanded objective medical evidence of Mr.
2 McGlasson's pain and engrafted terms onto the Plan.

3 96. On information and belief, the file reviewers and vendors were financially
4 incentivized to deny Mr. McGlasson's claim. MLS Peer Review Services ("MLS") and
5 Nationwide IME ("Nationwide") are biased companies, which frequently provide
6 insurance companies with reviews that are favorable for the denial of claims.
7 Prudential's physician reviewer, Dr. Siva Ayyar, was provided by MLS. Prudential's
8 physician reviewer, Dr. Claude Oster, was provided by Nationwide. Prudential knew or
9 should have known that MLS and Nationwide are biased companies. As a company-
10 wide practice, Prudential uses MLS and Nationwide, because it knows they provide
11 reviews that are favorable to the denial of claims.

12 97. Prudential used MLS and Nationwide in Mr. McGlasson's claim, because
13 it knew that the reviews would be unfavorable for the continuation of his benefits.

14 98. Prudential unreasonably failed to ensure that MLS and Nationwide
15 provided unbiased and/or qualified reviewing doctors for purposes of its claims
16 administration.

17 99. Dr. Ayyar and Dr. Oster had no reasonable basis for their recommended
18 restrictions and limitations.

19 100. On information and belief, Dr. Ayyar and Dr. Oster have been retained by
20 Prudential on numerous occasions to conduct claims reviews or other evaluations.

21 101. Both Dr. Ayyar and Dr. Oster have a history of bias against claimants and
22 have been cited in several court cases, which demonstrate the lack of objectivity and
23 reliability of their reports.

24 102. The peer reviewers arbitrarily reached their opinions based on insufficient
25 evidence or investigation.

26 103. Prudential's physician reviewers never attempted to speak with Mr.
27 McGlasson's treating physicians.
28

1 104. None of Prudential's reviewing physicians ever set forth any substantive
2 reasons why Mr. McGlasson's doctors' opinions that he could not work were incorrect.

3 105. Prudential failed to explain why it credited the physician reviewers over
4 Mr. McGlasson's treating physicians.

5 106. The peer reviewers were not given the Plan or other important records for
6 reaching its decision that Mr. McGlasson could perform sedentary work.

7 107. The peer reviewers never spoke to Mr. McGlasson, and they never
8 conducted an in-person evaluation of him.

9 108. Given Mr. McGlasson's medical conditions and symptoms, there is no way
10 he can perform the material and substantial duties of his regular occupation, or any
11 gainful occupation.

12 109. Mr. McGlasson has exhausted his administrative remedies.

13 110. Mr. McGlasson has afforded Prudential every opportunity to act prudently
14 and to fairly consider his claim but instead, Prudential pursued a predetermined flight
15 path to terminate Mr. McGlasson's claim, regardless of the medical evidence provided
16 on appeal.

17 111. Prudential is not entitled to an arbitrary and capricious standard of review
18 of their decision in this action, so Mr. McGlasson's claims are entitled to *de novo* review
19 with a bench trial on the record.

20 112. Pursuant to the coverage provided in the Plan, to ERISA 29 U.S.C. §
21 1132(a)(1)(B), and to applicable federal and state common law, Mr. McGlasson is
22 entitled to recover all benefits due under the terms of the Plan, and to enforce his rights
23 under the Plan.

24 113. Mr. McGlasson is entitled to reinstatement of any other employee benefits
25 that were terminated, discontinued, or suspended as a result of the termination of his
26 disability benefits. He is entitled to a restoration of the *status quo ante* before LTD
27 benefits were wrongfully terminated.
28

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1 120. In multiple ways throughout the administration of Plaintiff's claim,
2 Prudential breached its fiduciary duties pursuant to 29 U.S.C. § 1132(a)(2)-(3).
3 Prudential's arbitrary and capricious claims handling generally constitutes a breach of
4 fiduciary duty, because Prudential's claims handling was discharged imprudently and
5 caused Mr. McGlasson harm that cannot be recovered under 29 U.S.C. § 1132(a)(1)(B).
6 Mr. McGlasson filed for bankruptcy due to an inability to pay household and medical
7 bills, which only occurred because of Prudential terminating LTD benefits. Mr.
8 McGlasson had to get roommates and borrow money, including racking up credit card
9 debt, in order to avoid the foreclosure of his family's house, and the financial stress of
10 losing his LTD benefits nearly ended his marriage. Mr. McGlasson now owes significant
11 attorneys' fees because of Prudential's breaching conduct. Prudential arbitrarily and
12 capriciously denied Mr. McGlasson's benefits, which constitutes a breach of fiduciary
13 duty. To the extent that Prudential's arbitrary and capricious denial of benefits caused Mr.
14 McGlasson harm unrecoverable under 29 U.S.C. § 1132(a)(1)(B), that harm is recoverable
15 under 29 U.S.C. §§ 1132(a)(2)-(3).

16 121. Prudential and/or RCG, as an agent of Prudential, breached their fiduciary
17 duties to Mr. McGlasson by securing and relying on activities checks that included
18 "neighborhood canvassing." The neighborhood canvassing and activities checks
19 generally caused Mr. McGlasson and his family humiliation and permanently harmed his
20 relationship with his neighbors. There is no record documenting what specific questions
21 were asked as part of the "canvass," how many people were interviewed, or how long
22 the conversations lasted.

23 122. Prudential's "activity checks" were intrusive, unnecessary, caused
24 significant embarrassment for Mr. McGlasson, and damaged the relationship he had with
25 his community. Prudential's and RCG's actions were unreasonable, shocking, unfair,
26 malicious, and imprudent. To this day, Mr. McGlasson has not been afforded the
27 opportunity to confront the neighbors who purportedly provided statements regarding his
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1 life and functionality – statements that were considered at every stage of Prudential’s
2 appeal review. Prudential’s further reliance on that improper information in and of itself
3 constitutes a breach of fiduciary duty. Prudential and its agents should be permanently
4 enjoined from interviewing unidentified neighbors and then using those statements against
5 claimants such as Mr. McGlasson. Prudential’s and RCG’s conduct caused Mr.
6 McGlasson actual harm, and he is entitled to monetary compensation for that harm. He is
7 further entitled to the removal of RCG as a fiduciary and/or injunctive/mandamus relief
8 preventing Prudential from engaging in “neighborhood canvassing” and similar activities
9 checks with RCG.

10 123. Prudential sought “overpayment” of SSDI benefits from Mr. McGlasson
11 immediately following its termination of his LTD benefits and has now sent him to a
12 collections agency since the Final Denial. It pursued collection efforts while administering
13 Mr. McGlasson’s claim in its capacity as a fiduciary, despite the obvious conflict resulting
14 from this dual role. While Prudential’s overpayment efforts are evidence of its structural
15 conflict of interest as both payer and decision-maker unduly influencing claims decisions,
16 its conduct *also* constitutes a separate breach of fiduciary duty, entitling Plaintiff to
17 surcharge and injunctive relief. Prudential is required to administer claims in the best
18 interests of beneficiaries and participants as part of its fiduciary obligations; but
19 “stand[ing] willing to take appropriate action in order to protect its [overpayment]
20 interest” flies in the face of the actions of a fiduciary charged with fully and fairly
21 reviewing claims. Prudential’s actions have caused Mr. McGlasson serious harm. He has
22 been caused significant worry about his credit being further injured by Prudential’s
23 recovery efforts and is at collections based on Prudential’s letter dated May 1, 2015 once
24 again demanding overpayment. Prudential again began communicating with Mr.
25 McGlasson directly instead of this office through a collections agency, and Mr.
26 McGlasson is now being harassed by creditors.

27 124. Prudential should be enjoined from sending participants, including Mr.
28

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McGlasson, to collections agencies for “overpayment” resulting from SSDI benefits. This is relief unavailable to Prudential under ERISA, and Prudential should be further enjoined from enforcing its purported overpayment rights in light of its malicious conduct. Under ERISA, Prudential can only seek *equitable relief* from Mr. McGlasson. By sending Mr. McGlasson to collections, Prudential has deliberately circumvented the proper channels for relief provided by ERISA. Specifically, Mr. McGlasson’s retroactive SSA award does not constitute a “particular fund” that Prudential is entitled to as overpayment *See Bilyeu v. Morgan Stanley Long Term Disability Plan*, 683 F.3d 1083 (9th Cir. 2012).

125. Prudential’s use of Allsup, a company which functions as Prudential’s advocate and not participants, is a further breach of fiduciary duty entitling Mr. McGlasson to equitable relief. Prudential improperly delegating its fiduciary duties to third parties on multiple occasions throughout Plaintiff’s claim.

126. Prudential’s structural conflict of interest manifests in the form of “flight paths,” but Plaintiff is informed and believes the use of flight paths constitutes a breach of fiduciary duty. Prudential failed to discharge their duties solely in the interest of Mr. McGlasson as a Plan participant by using “flight paths.” Plaintiff is informed and believes that “flight paths” resulted from Prudential’s company-wide efforts to deny claims based on financial liability instead of merits. As an institution, Prudential uses claim payment reduction goals and cost containment measures as a method of profit-making for the company. In so doing, Prudential unfairly and arbitrarily reduces or denies payments on legitimate claims in an across-the-board fashion to attain its numerical reduction goals. Prudential’s cost containment measures are consistent with and a part of a corporate-wide plan and scheme.

127. Prudential transformed its profitability on its LTD business between 2011-2013 by decreasing the amount of benefits paid out, and also by taking in fewer premiums for LTD contracts. Between 2011-2012, Prudential lost money. Its adjusted operating income *decreased* by \$147 million for 2012, in part due to less favorable group disability

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1 underwriting results, causing new LTD claims to “outpace” claims resolutions. The
2 increase in LTD business “was driven by an increase in the incidence and severity of
3 [LTD] claims and growth in the business,” which contributed to Prudential’s increased
4 expenses and thus, reported losses for 2012. By 2013, however, Prudential’s adjusted
5 operating income *increased* by \$141 million. It accomplished this revenue increase not by
6 selling more policies, but instead by decreasing the expenses it paid out, in large part by
7 reducing its claims reserves by \$147 million; this happened to be the exact amount of
8 adjusted operating income it had lost the year before. Prudential attributed its reduction in
9 claims reserves to a decline in LTD claims and also to its “enhanced pricing discipline”
10 regarding “group disability business.” From 2012 to 2013, Prudential also increased
11 operating costs for the purpose of bolstering its LTD “claims management process.” This
12 is significant, because the 2012-2013 savings show “higher claims resolutions and
13 reduced claim incidence for long-term contracts,” which would be attributable to
14 increased claims management.

15 128. On information and belief, Prudential’s efforts to increase profitability
16 following its 2012 losses directly influenced its ongoing handling of Mr. McGlasson’s
17 claim. By terminating Mr. McGlasson’s claim in 2013, Prudential saved itself significant
18 liability.

19 129. On information and belief, Prudential did not have proper safeguards to
20 ensure that its focus on profitability did not affect how its employees handled, evaluated,
21 and assessed claims.

22 130. Prudential offers eligible employees participation in the Prudential
23 “Leveraging Opportunities Program Long Term Incentive Award Plan” and, on
24 information and belief, offers other incentive, or “bonus” programs to award employees
25 for their “alignment with the actual savings and operational goals achieved” by
26 Prudential.
27
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1 131. On information and belief, Prudential instructs and/or incentivizes certain
2 employee(s) to terminate fully insured LTD claims and appeals, including but not
3 limited to Prudential employees Erin Benjamin, Susan Schultz, James Papi, Kimberly
4 Cyr, and Louissette Hunter.

5 132. Mr. McGlasson is informed and believes that Prudential's employees,
6 including but not limited to those mentioned in paragraph 131, are trained in handling
7 "high risk" claims, "flight path" cases, "senior claims review," and in administering
8 claims in the best interests of Prudential, not Plan participants. Mr. McGlasson is
9 informed and believes that Prudential incentivizes its employees to "manage" claims in
10 Prudential's best interests, including but not limited to his claim. Prudential's flight path
11 arrangement is a breach of fiduciary duty requiring appropriate equitable relief following
12 discovery on the meaning of "flight paths" as it relates to Mr. McGlasson's claims
13 handling.

14 133. Prudential was unjustly enriched as a result of its breach of fiduciary duty
15 violations, because it wrongfully withheld Mr. McGlasson's benefits for its own profit.

16 134. Prudential engaged in several procedural violations in an attempt to
17 circumvent its obligations under ERISA, and these violations are by definition under 29
18 U.S.C. § 1132(a)(3) conduct that can be enjoined by this Court. For example, Prudential
19 sought an IME on appeal and used the IME as a justification for "tolling" deadlines under
20 ERISA.

21 135. The claim file is replete with examples of Prudential acting with malice and
22 in bad faith against Mr. McGlasson, which constitutes a violation of its fiduciary duty.

23 136. ERISA "does not elsewhere adequately remedy" the injuries caused to Mr.
24 McGlasson by Prudential's breach of fiduciary duty violations.

25 137. As a direct and proximate result of the breaches of fiduciary duty, Mr.
26 McGlasson suffered actual financial harm and incurred financial expense.
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1 the Plan. Mr. McGlasson provided appeals to JPMorgan and notified JPMorgan that
2 Prudential was not providing relevant documents, which is ultimately the Plan
3 Administrator's responsibility.

4 146. On information and belief, JPMorgan, as the Plan Administrator, did not
5 periodically review Prudential's actions as a delegated fiduciary under the Plan.

6 147. On information and belief, the Plan Administrator's failure to periodically
7 review Prudential's actions as a delegated fiduciary under the Plan was unreasonable and
8 constituted a breach of fiduciary duty.

9 148. On information and belief, if the Plan Administrator did periodically
10 review Prudential's actions as a delegated fiduciary under the Plan, then its periodic
11 review was unreasonable and constituted a breach of fiduciary duty.

12 149. On information and belief, the Plan Administrator is liable for Prudential's
13 actions, because the Plan Administrator violated its fiduciary obligations by continuing
14 Prudential's delegation as Plan Administrator and/or by failing to protect Plan
15 participants from Prudential's conflicted and adversarial claims handling.

16 150. Mr. McGlasson was harmed by JPMorgan's failure to oversee Prudential's
17 conduct. Mr. McGlasson is informed and believes and Prudential has targeted claims
18 under the Plan, including Mr. McGlasson's, and JPMorgan's failure to protect its
19 participants is a breach of fiduciary duty.

20 151. Mr. McGlasson is entitled to equitable relief for Defendants' breach of
21 their fiduciary duties, including for the breaches of fiduciary duties committed by any
22 agents or third parties for Defendants.

23 152. Pursuant to 29 U.S.C. § 1132(g), Mr. McGlasson is entitled to recover his
24 attorneys' fees and costs incurred herein from JPMorgan and Prudential.

25 153. Because JPMorgan breached its fiduciary duties, Mr. McGlasson was
26 actually harmed.

27 154. Mr. McGlasson relied on the Plan and JPMorgan to his detriment.
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155. Mr. McGlasson is entitled to enjoin any act or practice by Defendants, which violates ERISA or the Plan, and/or he is entitled to seek other appropriate equitable relief that is traditionally available in equity.

WHEREFORE, on all claims, Mr. McGlasson prays for entry of judgment against Defendants as set forth in this Complaint, which includes:

- A. All past and future LTD benefits under the terms of the Plan;
- B. Clarifying and determining Mr. McGlasson's rights to future benefits under the terms of the Plan;
- C. Any statutory penalties that may be available to Mr. McGlasson as a result of Defendants' violations of ERISA;
- D. All other equitable relief that is proper as a result of Defendants' breach of fiduciary duties;
- E. An award of Mr. McGlasson's attorneys' fees and costs incurred herein;
- F. An award of prejudgment interest on benefits and damages at the highest legal rate until paid; and
- G. For such and further relief as the Court deems just, equitable, and reasonable.

Dated this 5th day of August 2015,

OBER & PEKAS, P.L.L.C.

By: 

Erin Rose Ronstadt
Attorney for Plaintiff